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6 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

7 **LOS ALAMOS NATIONAL BANK,**

8 Plaintiff-Appellee,

9 v.

NO. 31,427

10 **MAX URBAN and UNA ZAKAS,**

11 Defendants-Appellants.

12 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**

13 **Barbara J. Vigil, District Judge**

14 Jurgens & With, P.A.

15 James R. Jurgens

16 Santa Fe, NM

17 for Appellee

18 Max Urban

19 Santa Fe, NM

20 Pro Se Appellant

21 **MEMORANDUM OPINION**

22 **WECHSLER, Judge.**

23 Pro se Defendants appeal an order denying their motion for relief from

1 judgment pursuant to Rule 1-060(B)(5) and (6) NMRA (“Motion”). We proposed to
2 affirm in a notice of proposed summary disposition, and Defendants have filed a
3 timely memorandum in opposition. We remain unpersuaded by Defendants’
4 arguments and therefore affirm the district court’s order denying their Motion for
5 relief from judgment.

6 **Standard of review**

7 We review the district court’s decision on whether to grant relief pursuant to
8 Rule 1-060(B) NMRA for abuse of discretion unless the only issue presented is one
9 of law. *Kinder Morgan CO2 Co., L.P. v. State of N.M. Taxation & Revenue Dep’t*,
10 2009-NMCA-019, ¶ 9, 145 N.M. 579, 203 P.3d 110. “An abuse of discretion occurs
11 when a ruling is clearly contrary to the logical conclusions demanded by the facts and
12 circumstances of the case.” *Sims v. Sims*, 1996-NMSC-078, ¶ 65, 122 N.M. 618, 930
13 P.2d 153.

14 **Discussion**

15 On August 17, 2009, the district court granted summary judgment to Plaintiff,
16 Los Alamos National Bank, and entered a decree of foreclosure (“Summary Judgment
17 Order”). [RP 508, 512; DS 2] Defendants appealed the Summary Judgment Order,
18 and this Court issued a memorandum opinion affirming in Case No. 29,905, with
19 mandate issuing on June 9, 2010. [RP 774-781] On October 15, 2010, Defendants

1 filed their Motion for relief from judgment, [RP 783] and the district court denied the
2 Motion on May 27, 2011. [RP 867-868]

3 In denying Defendants' Motion, the district court found that, to the extent
4 Defendants were seeking to revisit the Court of Appeals decision in Case No. 29,905,
5 such review was precluded because Defendants failed to file a petition for writ of
6 certiorari with the Supreme Court. [RP 867-868] We proposed to affirm this finding
7 in our notice of proposed disposition.

8 In their memorandum in opposition, Defendants do not rebut the analysis
9 contained in our previous notice. [MIO 1-2] Instead, they argue that this Court can
10 treat a notice of appeal and docketing statement as a petition for writ of certiorari.
11 [MIO 2] Even if this may be true in certain circumstances, in this case Defendants
12 failed to file any documents with the Supreme Court to seek review of this Court's
13 opinion in Case No. 29,905. *Cf.* Rule 12-502(B) NMRA (stating that a petition for
14 writ of certiorari must "be filed with the Supreme Court clerk within thirty (30) days
15 after final action by the Court of Appeals"). Therefore, for the reasons set forth in our
16 notice of proposed summary disposition, we affirm the district court's finding that
17 Defendants' failure to file a timely petition for writ of certiorari with the Supreme
18 Court precludes the district court from revisiting this Court's affirmance of the
19 Summary Judgment Order.

1 In our notice, we also proposed to affirm the district court’s findings that
2 Defendants failed to make a sufficient showing entitling them to relief under Rule 1-
3 060(B)(5) and (6). [RP 868] We noted that Defendants failed to make a showing that
4 they were entitled to relief pursuant to Rule 1-060(B)(5) because they failed to show
5 why enforcement of the Summary Judgment Order was no longer equitable. *Cf.*
6 *Edens v. Edens*, 2005-NMCA-033, ¶ 23, 137 N.M. 207, 109 P.3d 295 (declining to
7 set aside portions of a settlement agreement pursuant to Rule 1-060(B)(5) because the
8 husband failed to show that enforcement of the agreement was inequitable).

9 As to Rule 1-060(B)(6), we noted that relief is only warranted if the movant
10 establishes exceptional circumstances “beyond the grounds enumerated in the other
11 subsections.” *Resolution Trust Corp. v. Ferri*, 120 N.M. 320, 326, 901 P.2d 738, 744
12 (1995); *see Meiboom v. Watson*, 2000-NMSC-004, ¶¶ 19, 33, 128 N.M. 536, 994 P.2d
13 1154 (noting that relief pursuant to Rule 1-060(B)(6) requires the moving party to
14 demonstrate compelling or exceptional circumstances). We proposed to hold that
15 Defendants failed to make the requisite showing of exceptional circumstances.

16 In their memorandum in opposition, Defendants fail to rebut or even to address
17 the analysis contained in our notice of proposed summary disposition. [MIO 3-5]
18 Instead, they reiterate the arguments made to the district court as to why the Summary
19 Judgment Order was no longer, and had never been equitable. [MIO 3-4; RP 783-

1 790] We continue to disagree for the reasons set forth in our notice of proposed
2 summary disposition.

3 In sum, Defendants’ reiteration of the arguments made in their Motion fails to
4 convince us that the analysis contained in our proposed disposition is in error.
5 Therefore, for the reasons set forth in our previous notice, we remain of the opinion
6 that the district court did not err in denying Defendants’ Motion for relief from
7 judgment. *Cf. Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d
8 683 (“Our courts have repeatedly held that, in summary calendar cases, the burden is
9 on the party opposing the proposed disposition to clearly point out errors in fact or
10 law.”).

11 **Conclusion**

12 For the reasons set forth above as well as those set forth in our notice of
13 proposed summary disposition, we affirm the district court’s order denying
14 Defendants’ Motion for relief from judgment pursuant to Rule 1-060(B)(5) and (6).

15 **IT IS SO ORDERED.**

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17 **JAMES J. WECHSLER, Judge**

1 **WE CONCUR:**

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3 _____
RODERICK T. KENNEDY, Judge

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TIMOTHY L. GARCIA, Judge